



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mount Diablo Corporation, Inc.

File: B-228193

Date: November 10, 1987

DIGEST

Where a bid is submitted in the name of one firm as a corporation but is accompanied by a bid bond in the name of the corporate bidder and an individual as a joint venture doing business under the corporate name, the bond is materially deficient, as the obligation of the surety is unclear, and, therefore, the bid must be rejected as nonresponsive.

DECISION

Mount Diablo Corporation, Inc., protests the rejection of its low bid under solicitation No. CA PORE ERFO 1364 (1) and 10 (2), issued by the Federal Highway Administration (FHWA) for construction services. FHWA determined that Mount Diablo's bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the entity shown on the bid bond.

We deny the protest.

The bid submitted listed Mount Diablo Corporation, as the bidder, and was signed by Vinton Allen Garbesi, as president. In the certification section of the bid, "corporation" was checked as the type of business organization. The bid bond enclosed with the bid listed as principal "Vinton A. Garbesi, an individual and Mount Diablo Corporation, Inc., a California Corporation, a Joint Venture DBA: Mount Diablo Corporation, Inc., PO Box 30393, Walnut Creek, California 94598," and both "individual" and "corporation" were checked as the type of business organization. The signature of Vinton A. Garbesi appeared as president.

Bid bond requirements are a material part of a solicitation. See 52 Comp. Gen. 223 (1972); Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, Jan. 19, 1983, 83-1 C.P.D. ¶ 69. A bid bond which names a principal different

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from the nominal bidder is deficient and the defect may not be waived as a minor informality. A. D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. See Hoyer Construction Co./K.D. Hoyer, a Joint Venture, B-183096, Mar. 18, 1975, 75-1 C.P.D. ¶ 163; Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, supra. A surety under a bond in the name of more than one principal is not liable for the default of one of them. For this reason, we rigidly apply the rule that the principal listed on the bid bond must be the same as the nominal bidder. Opine Construction, B-218627, June 5, 1985, 85-1 C.P.D. ¶ 645.

Mount Diablo contends that its bid is responsive because the entity listed on the bid is the same entity listed on the bid bond, and, therefore, the government's interest is protected. Moreover, the protester submits the affidavit of the surety in support of its argument that it was the bid of Mount Diablo under the which the surety assumed liability to the government.

In our opinion, Mount Diablo's arguments are without merit. Mount Diablo has not shown that the legal entity listed on the bid, a corporation, is the same as the legal entity listed on the bid bond, a joint venture doing business under the name of a corporation.

Mount Diablo argues that the use of the term "DBA" (doing business as) in the bid bond sufficiently identifies Mount Diablo Corporation, Inc., as the same entity on the bid. We do not agree. The entity on the bid is identified as a corporation while the entity on the bid bond is a joint venture doing business under the assumed or fictitious name of Mount Diablo Corporation, Inc. While the names may be the same, the legal entities are different.

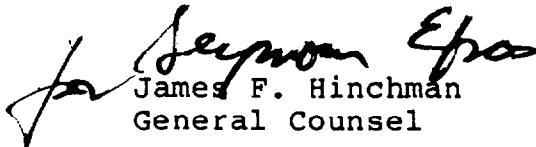
Mount Diablo has cited numerous decisions in support of its argument that minor variations between a bid and bid bond would not render the bid nonresponsive. See Jack B. Imperiale Fence Co., Inc., B-203261, Oct. 26, 1981, 81-2 C.P.D. ¶ 339; Lamar Electric Co., B-216397, Dec. 24, 1984, 84-2 C.P.D. ¶ 689; B-176321, August 25, 1972; B-169369, April 7, 1970. These cases are not applicable to this case. For example, in Jack B. Imperiale Co., Inc., the bid and bid bond identified the bidder by three different corporate names. The legal entity on the bid and the bond, however, was the same, a corporation. The bidder in Jack B. Imperiale was able to show that despite the variations in name, the differently identified entities were actually the same. Similarly, in Lamari Electric Co., the entity that

submitted the bid and was the principal on the bid bond is the same, an individual. Thus, while the name on the bid was different from the name on the bid bond, the names referred to the same legal entity, and the legal entity that submitted the bid was the same as the entity on the bid bond.

In this case, the legal entity submitting the bid is a corporation while the entity on the bid bond is a joint venture doing business under a corporate name. While the names appear the same, the legal entities are different. In Andersen Construction Co., et al., B-213955 et al., Mar. 9, 1984, 84-1 C.P.D. ¶ 279, and Villarreal Construction, Inc., B-184409, Nov. 28, 1975, 75-2 C.P.D. ¶ 351, we found that where a bid is submitted by a corporation but accompanied by a bid bond which identifies the corporation and its president as a joint venture, the bid was properly rejected as nonresponsive. The same result is warranted here.

Mount Diablo also argues that its bid is responsive because the surety considered itself bound under the bid bond to the bid of Mount Diablo Corporation, Inc. While it may have been the intent of the surety to incur the debts of Mount Diablo Corporation, Inc., as stated in the surety's affidavit, this fact cannot be conclusively determined from the bid and bid bond without resort to post bid opening explanations. Therefore, we find the bid properly was rejected as nonresponsive. See H & N Electric, Inc., et al., B-224024, Dec. 29, 1986, 86-2 C.P.D. ¶ 718.

The protest is denied.


James F. Hinchman
General Counsel